

WESTERN STATE COLLEGE OF LAW  
AT WESTCLIFF UNIVERSITY

SYLLABUS, POLICIES, AND ASSIGNMENTS  
2021 SPRING SEMESTER  
REMEDIES, SECTION 303A

PROFESSOR SHEPPARD

CLASS MATERIALS:

REQUIRED TEXT: Shoben, Tabb, Janutis, and Main, Remedies Cases and Problems  
Sixth Edition (Foundation Press 2016) ISBN: 978-1-63460-263-1

COURSE COVERAGE AND OPPORTUNITIES

In this course, you will be provided with opportunities to:

- Enhance your analytical, problem solving, and related skills that you will use as an attorney either in dispute resolution settings by utilizing the IRAC, or a similar approach, to legal analysis, legal argument, and application of fact to law.
- Develop a working knowledge of various legal and equitable remedies.
- Enhance your oral communication skills and legal research and writing skills.

WESTERN STATE COLLEGE OF LAW – PROGRAMMATIC LEARNING OUTCOMES

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

(1) Doctrinal Knowledge

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Associations, Evidence, Civil Procedure, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

(2) Practice Skills

Students will demonstrate the development of other law practice skills. Each student’s chosen outcomes within this category will be varied based on the student’s particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternative dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

- (3) **Legal Analysis**  
Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities and differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and to evaluate how public policy can impact the application of a rule to the legal issue.
- (4) **Legal Research**  
Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.
- (5) **Communication**  
Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author's or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).
- (6) **Advocacy of Legal Argument**  
Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to resolution of the application of a rule to the legal controversy.
- (7) **Client Sensitivity and Cultural Competency**  
Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' backgrounds and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.
- (8) **Legal Ethics**  
Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

#### **COURSE COVERAGE**

This course covers information regarding basic remedial tools, injunctions and specific performance, damages, and restitutionary remedies (including, constructive trusts and equitable liens).

#### **COURSE METHODOLOGY**

I utilize a combination of classroom methods to assist you in your effort to achieve the objectives of this course. Those methods include: the Socratic method of interaction to enable you to properly gauge the

current level of your working knowledge of course subject matter; the case method of exploring and examining legal principles and methods of application of those principles to stated and inferable facts (including, but not limited to, how to deconstruct case law, statutory law, and other sources of law); and problem solving.

*It will be incumbent upon you to engage in an appropriate study and review of each course assignment before we address the assigned material during class. The primary focus of our classroom discussions will be the manner in which you should use the course material to raise and resolve issues regarding remedies that may be able to be sought on behalf of a client if the client is able to prevail on a cause of action or other type of claim. To engage in an appropriate study of course material, at a minimum, you must complete a critical reading of that material; and you must brief each principal case included in the course text, each case cited in a text note, and any case which I might assign as additional reading. You should also read additional reference material (e.g., relevant portions of a hornbook or treatise). Your study habits must also include you engaging in activities that will hone your skills of legal analysis and exam taking and writing. I will also expect you to have prepared appropriate work product regarding text problems that are part of the assigned reading. Adhere to the IRAC method of legal analysis to the extent necessary during classroom discussions, when engaged in problem solving exercises, and during the course final exam.*

#### **EXPECTATION OF YOUR AMOUNT OF OUTSIDE PREPARATION TIME**

I expect you to devote a **MINIMUM** of **NINE HOURS** to prepare for each three-hour class session.

#### **ZOOM CLASS SESSIONS AND ZOOM OFFICE CONFERENCES**

Unless you are notified otherwise, our semester class sessions will be conducted using Zoom.

**Carefully review and adhere to the following requirements regarding Zoom sessions:**

- **Find a dedicated quiet space to attend Zoom sessions, to minimize the chances that you will be disrupted during the session.**
- **Arrive to a class Zoom session early and dressed as you would to attend an in-person class session.**
- **Your camera must be turned on for the duration of either a class Zoom session or a Zoom office conference. If you desire, you can use the background settings in Zoom to create an artificial background that blocks the view of your space while still allowing you to be seen on camera.**
- **Come prepared, as you would for an in-person class session or in-person office conference. Participation in Zoom classes is as important as it is during an in-person class session.**
- **Do not multitask – stay focused on the class discussion – do not wander in and out of the Zoom session.**
  - **Zoom classes are not YouTube or Netflix. You should be actively engaged in answering questions, taking notes, writing down questions you wish to ask later during class or during office hours, etc. This will not only help you stay engaged and participating in class, it will also help your learning in the online format.**
- **If you have to miss a Zoom session, or arrive late, or leave early, notify me in advance; as you would for an in-person class.**

- If you have connectivity issues, whether it be long-term or short-term, that impact your ability to participate (e.g., if you are limited to dial-in without video), notify me so other accommodations can be explored.
- Do not post screenshots or recordings of any Zoom classes or Zoom office conferences on social media. Such actions will constitute a violation of the Student Honor Code. If you need access to a recording of the Zoom session, please contact me.
- Sign into Zoom with the name under which you are registered for class. If you prefer to be called by a different name or nickname, please notify me in advance to avoid being marked as absent.
- Unless I instruct you otherwise, mute your microphone when you are not speaking. Unmute your microphone to ask a question, or to respond to a question, or to make a comment.
- If you intend to use your computer to take notes and/or to use the eBook version of the course text, you may not be able to easily switch between those apps and the Zoom session. This could undermine your ability to pay attention to the class discussion. You must figure out how you will resolve that technological issue before our first class session and consider possible modifications to your normal mode of note taking (e.g., switch to taking notes by hand) or using a two-screen set-up.
- Zoom has a number of tools available for you to use as a student: yes/no symbols, raise hand and thumb icons, share screen if I permit you to use that tool, chat windows, etc. Please familiarize yourself with those tools before class so that you can use them to the extent I allow you to use those tools. I will provide additional information to you about the way in which you are to use a particular tool in during a particular Zoom class session.
- From time-to-time, I may utilize various interactive functions in Zoom such as polling questions, breakout rooms, etc. I will expect you to participate fully in any such activities and functions; for example, answering polling questions, speaking with your classmates during breakout sessions, and so forth.

#### LEXIS CLASSROOM

You will be able to enroll in the course Lexis Classroom platform on and after 9:00 a.m., Monday, January 11, 2021. The last day that you will be able to access the web course material is Monday, May 31, 2021. To enroll in the web course:

1. Log into LexisNexis for Law School at <https://www.lexisnexis.com/lawschool/>.
2. In the **Student** view, click the **Add A Course** link found on the right-hand side of the page.
3. Locate my name (Sheppard); then click my name.
4. Locate **Select Course to Enroll**; locate Remedies and click.
5. Follow the instructions to enroll in the Remedies Lexis Classroom
6. If you are directed to enter a password, enter: C469XK

If you encounter a problem while attempting to enroll in the web course, please contact a LexisNexis representative, or Faculty/Academic Support person Julie Kohler (714-459-1128), or Library Director Sarah Eggleston (714-459-1110).

## EXAMINATION AND GRADING

**There will not be a midterm exam in this course.** Each class session will provide to you ample opportunity for you to engage in self-assessment of your level of understanding of course material which will enable you to plan weekly study regiments accordingly and to formulate questions that you will need to present to me either during a class session, or during an office consultation, or by email, or a combination thereof.

There will be one graded course exam; to wit: the course final exam.

### FINAL EXAM

The final exam will be comprehensive in scope. If I do not advise you differently, the final exam will be a take-home examination.

The maximum number of points that you will be able to earn on the final exam will be 100 points.

### GRADING

Your academic performance in this course will be measured and recorded using a numeric grade system on a scale of 0.0 to 4.0. Please also read that portion of the current edition of the Student Handbook regarding the “Grading System and Student Honors.”

To earn a numeric grade of 4.0, your course grade points must equal 90 or better. The total of 89 course grade points results in a 3.9 course grade; 88 course grade points results in a 3.8 course grade and so forth.

The foregoing illustrates that the highest accumulation of raw points earned by a student enrolled in this course is **not** automatically regarded as an “A.” For example, if the best aggregate, graded student work product in this class results in a total of 85 course grade points, the highest grade in the class will be 3.5. On the other hand, if the exam work product of **every** student in the class results in total course grade points for each student that is 90 or better, then the course grade earned by every member of the class will be 4.0.

### PRACTICE EXERCISES

I strongly urge you to include exam writing, or exam taking, *exercises* as part of your daily study habits beginning in the second week of the semester and continuing throughout the semester and during the interim between the last day of class and the administration of the final exam. The time devoted to any such *exercise* can range from about 10 to 20 minutes.

I am willing to critique practice issue spotting exercises and practice issue statements, or reviewing outlines of answers to practice problems (e.g., a text problem), or practice answers using the IRAC method of legal analysis of a practice problem (e.g., a text problem), or some portion of a practice problem, during the semester. **It behooves you** to study the supplements I have posted to the web course regarding study habits, exam prep, and methods to analyze multiple-choice problems and essay problems. If you wait until close to the end of the semester to submit any such work product to me for review and comment, you will run the risk that I will not have sufficient time to provide feedback to you before the final exam is administered. I do **not** critique student course outlines.

### OFFICE HOURS, OFFICE TELEPHONE, E-MAIL, FAX

Unless you are notified otherwise, “office conferences” will be conducted via Zoom. If you wish to engage in a Zoom conference with me, you **MUST** send an email to me to request a Zoom conference. You should

submit such an email to me at least 24 hours prior to the day and time you wish to have a Zoom conference with me. I will send you an email that will include a Zoom meeting invitation.

The days on which and the times during which I should be able to engage in a Zoom conference this semester are: (1) 10:00 a.m. to 12:00 p.m., Monday through Thursday; and (2) 4:30 p.m. to 6:30 p.m., Monday through Thursday. If your schedule of classes or your work schedule will not permit you to request a Zoom conference during the aforementioned times, let me know so that hopefully, I can schedule a Zoom conference at a time and day that will be convenient for both of us.

**Zoom conferences for two or more students at a time are encouraged.** I will need the names of each student who will participate in such a Zoom conference so that I may send each student an email invitation to participate in the planned Zoom conference.

I will not conduct any Zoom conferences during Spring Break (Monday, March 15, 2021 – Sunday, March 21, 2021).

You may contact me via e-mail by addressing your communication to [csheppard@wsulaw.edu](mailto:csheppard@wsulaw.edu). You may contact me via telephone by calling (714) 459-1152. The faculty fax number is (714) 525-2786. If you send a fax to me, be sure to include an appropriate cover sheet.

#### **MANDATORY ATTENDANCE, CLASS PARTICIPATION, DECORUM, AND SEATING**

**Attendance in class is mandatory.** If you are absent from more than six hours of class sessions, you will be subject to being administratively withdrawn from the course. If you have not already done so, you should study the appropriate portions of the current edition of the *Student Handbook* regarding the College of Law's attendance policy.

Due to possible differences in the manner in which course materials are covered in different sections of a course, you are **not** permitted to "make-up" a missed class by attending another section of this course regardless of whether the other section is taught by another professor or by me.

I will keep attendance records using Zoom attendance reports.

**To be successful in law school, you must be an active learner. You will gain maximum benefit from class attendance only if you are prepared for class. Proper preparation for a class session by you will include, but not be limited to: engaging in effective time management; engaging in a critical reading and re-reading of assigned course material; briefing cases; critically reading and re-reading text notes and footnotes; analyzing problems included as part of assigned reading; critically reading court opinions of cases cited as part of text notes or Points for Discussion; reviewing and editing your notes you have taken regarding prior class sessions; reading, and re-reading if necessary, course computer slides posted to the web course; personally preparing and reviewing study aids (e.g., sections of your personally prepared course outline, flash cards, and/or flow charts or diagrams); reading and re-reading to the extent necessary appropriate segments of hornbooks, treatises, workbooks or other study aids; engaging in exam prep or exam taking exercises; and preparing questions that you want addressed during an ensuing class session.**

You should be prepared to participate in class sessions. You should be an active listener at all times during class sessions when you are not speaking during the class session. Being an active listener includes assessing whether you understand, or you do not understand, comments being made by me, or by one of your classmates. If you conclude that you do not understand my comments or the comments of a classmate, be sure to seek recognition so that you may voice your question. If you understand my

comments or the comments of a classmate, you should assess whether you agree or disagree with those comments. More importantly, you should assess the reason or reasons you agree or disagree with those comments. Do not hesitate to seek recognition to voice your questions or comments along those lines as well.

I expect you to maintain proper decorum during each class session. You are also required to adhere to the College of Law's "Principles of Community," and "Honor Code," and other conduct policies included as part of the current edition of the *Student Handbook*.

### **DISABILITY SERVICES STATEMENT**

Western State College of Law provides accommodations to qualified students with disabilities. The Disability Services office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Sr. Asst. Dean Donna Espinoza, Disabilities Services Coordinator, whose office is in the Students Services suite #111. Dean Espinoza's phone number and email address are: (714) 459-1117; [despinoza@wsulaw.edu](mailto:despinoza@wsulaw.edu). When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza in her capacity as the Disability Services Coordinator to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Allen Easley at [aeasley@wsulaw.edu](mailto:aeasley@wsulaw.edu) or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

### **READING ASSIGNMENTS:**

I encourage you to complete your initial study of each set of assignments prior to the week during which we are scheduled to address that material. Be sure to note whether the reading assignment includes the study of supplemental material.

Complete all reading as assigned. If the class "falls behind" in the assessment of a particular aspect of the course, do not "fall behind" in your study of assigned course material. You do not want to be "left in the dust" when the class "catches up" to assignments as scheduled.

**Do not lull yourself into a false sense of preparedness by only reading the content of the assigned text pages and course supplements. I expect you to:**

- **Look up the definitions of words and phrases that are not familiar to you.**
- **Brief cases; if the edited opinion included in the book is confusing to you, access the unedited opinion using either your Lexis or Westlaw account.**
- **Read cases, statutes, or other sources of law cited in a text "Point for Discussion"**
- **Use eBook features to access supplemental information provided by the authors of the text.**
- **Analyze each problem that is part of a reading assignment and compare your analysis with the comments regarding each problem that are posted to the Assignments section of the web course.**

- Prepare questions that you want me to address; either post your question to the appropriate Discussion thread on the Lexis Classroom platform, or email your question to me, or state your question at the appropriate time during a class session.
- Copies of the “computer panels” I might display during a class session are posted to the Course Documents section of the web course for you to access and study as assigned.

**READING ASSIGNMENTS:**

<b>Week</b>	<b>Date</b>	<b>TOPICS</b>	<b>PAGES</b>
1	01-19-2021	Preface  Basic Remedial Tools  <u>Scope of Legal and Equitable Remedies:</u>  (A) Limitations on Remedies  (B) Consequences of Remedy Characterization  <u>Preventive Injunctions:</u>  (A) Inadequacy of Remedy at Law	v – vii  1 – 8  15 – 24 ; 27 – 32  39 – 43  51 - 58
2	01-26-2021	<u>Preventive Injunctions:</u>  (B) Irreparable Harm  (C) Balancing Interests and Practicality Considerations   (D) Public Interest and Tribunal Integrity	58 – 66  66 – 71 (Including Note 4 – <i>Nuisance</i> ; not including “The Persistent Spouse” problem)  77 – 82 (beginning with the case of <i>eBay Inc. v. MercExchange</i> )  82 – 101
3	02-02-2021	<u>Specific Performance:</u>  (A) Entitlement  (B) Fashioning Relief  (C) Contracts for the Sale of Goods	103 – 127  127 – 141; 144 – 147  17 – 152

Week	Date	TOPICS	PAGES
4	02-09-2021	<u>Equitable Defenses:</u> (A) Laches and Estoppel (B) Unclean Hands and Unconscionability (C) Election of Remedies	161 – 172 (Skip “The Innocent Infringer Problem on p. 172); and 173 – 190 190 – 195; 199 – 202 213 – 222; 224 – 227
5	02-16-2021	No Class Session – “Legislative Day” – Monday Classes meet on this Tuesday	
6	02-23-2021	<u>Interlocutory Injunctions</u> (A) Substantive Requirements (B) Procedural Requirements (C) Injunction Bonds and Appeals	229 – 247 (Skip “The Threatened Landmark” problem); 248 – 251 257 – 264 272 – 285
7	03-02-2021	<u>Contempt</u> (A) Criminal Contempt (B) Civil Contempt and Coercive Civil Contempt	291 – 292; 296 – 306 323 – 331
8	03-19-2021	<u>Contract Damages</u> (A) Introduction (B) Sale of Goods (C) Liquidated Damages (D) Land Sales Contracts	425 – 438 443 – 456 498 – 505 516 – 518
9	03-16-2021	No Class Session – Spring Break	
10	03-23-2021	<u>Tort Damages</u> (A) Harm to Personal Property (B) Harm to Real Property	535 – 570 570 – 591

<b>Week</b>	<b>Date</b>	<b>TOPICS</b>	<b>PAGES</b>
11	03-30-2021	<u>Personal Injury Damages</u>  <u>Adjustments to Compensatory Damages</u>  (A) Present Value and Inflation	599 – 630    665 – 669
12	04-06-2021	<u>Limitations on Compensation Damages</u>  (A) Basic Principles of Limitation on Damages  (B) Avoidable Consequences  (C) Collateral Source Rule	701 – 721  721 – 736  736 – 737
13	04-13-2021	<u>Punitive Damages</u>  <u>Unjust Enrichment</u>  (A) The Unjust Enrichment Concept  (B) Benefits Acquired by Agreement or Mistake	809 – 811    855 – 873  873 – 849 (Skip “The Equipment Loan” problem on page 889); 892 – 897
14	04-20-2021	<u>Unjust Enrichment</u> – continued  (C) Waiver of Tort and Suit in Assumpsit  (D) Constructive Trust	901 – 908   917 – 925; 933 – 938
15	04-27-2021	<u>Unjust Enrichment</u> – continued  (E) Equitable Liens  <u>Limitations on Restitutionary Remedies</u>  (A) Tracing	938 – 949    951 – 959
16	05-04-2021	<u>Limitations on Restitutionary Remedies</u>  (B) Bona Fide Purchaser and Change in Position  (C) Volunteers  <u>Attorney Fees</u>  <u>Nominal Damages</u>  <u>Declaratory Judgments</u>	965 – 978  978 – 980  1041 – 1043  1081 – 1082  1095 – 1097